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## Victims' families sue Kaloko dam owners

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LIHU'E, Kaua'i — Retired car dealer Jimmy Pflueger or his associates covered up the Kaloko Reservoir dam's spillway, leading to a catastrophic breach in which seven people were killed, according to attorneys who filed a lawsuit on Kaua'i yesterday.

The suit, filed by the families of all but one of the victims in the March disaster, names Pflueger and several of his companies, plus the Mary N. Lucas Trust, of which Pflueger is a beneficiary. It seeks unspecified damages.

"This dam was built back in 1890 ... and had survived all sorts of weather and other problems until what we have asserted was illegal grading, which resulted ... in the breach of the dam," said plaintiffs attorney L. Richard Fried.

The suit charges that the spillway was altered so private recreational vehicles could be used in the reservoir. It calls a spillway "a safety feature designed to release excess water in order to maintain the structural stability of a reservoir or dam."

Pflueger attorney Bill McCorrison denied the allegation, saying, "information gathered thus far suggests there is no relation between the breach of the dam and the spillway in question."

McCorrison also questioned the timing of a lawsuit, saying it has been filed before the completion of various investigations into the cause of the Kaloko failure. The state attorney general has not selected the state's independent investigator, he said. And in the convoluted legal environment around the breach, McCorrison said the state must bear some of the responsibility.

"It is not unexpected that lawsuits follow incidents like the Kaloko flood, but it's unfortunate that it has been filed before the investigations are completed," he said. "We are also conducting our own investigation. During the course of our investigation, we have already learned a number of things, including the fact that the state was aware of safety risks at Kaloko dam as early as 1982 and did not share that information with the public or with Mr. Pflueger, who purchased the property in 1987."

Fried co-counsel Thomas R. Grande said, "We certainly hope the state of Hawai'i will go forward with the independent investigation and determine the potential culpability or contribution of various entities or individuals."

Before dawn on March 14, during weeks of extremely heavy rain, the former sugar cane reservoir failed. No witnesses to the breach have been found.

The 400 million-gallon reservoir — the state's fifth-largest — dumped an immense flood down Wailapa Stream's valley. It ripped out trees and scoured the streamsides. When it reached inhabited areas, the water and rolling tree trunks tore buildings from their foundations.

The flood undermined the wall of a dam below it, the Morita dam, severely damaged the foundations of Kuhio Highway, and entirely washed away three buildings on land owned by Bruce and Cynthia Fehring. Seven people had been asleep in the buildings, one of them pregnant. All were lost, and only three bodies were recovered.

Family members named as plaintiffs in the suit are natural and adoptive relatives of victims: Daniel Arroyo, 33, and Christina McNees, 22, who had been scheduled to be married the next weekend, and their unborn child, Mukuluk McNees; Alan Dingwall Fehring, 30, Aurora Fehring, 24, and their 2-year-old son Rowan Fehring-Dingwall; and Wayne Rotstein, 49. Relatives of victim Timothy Noonan, 37, a carpenter, were not among the plaintiffs.

Lead plaintiffs attorney Fried said Pflueger had been warned of the danger of filling the spillway.

ments maintain that Pflueger not only made changes to the reservoir spillway, but that he refused to permit state inspectors to conduct surveys on his property.

McCorriston said that is plain wrong. He said state officials had the legal right to enter the property at any time and were never denied access by Pflueger, although he conceded Pflueger did not specifically give them permission.

While the Lucas Trust is named as a defendant, Fried said the estate is not the focus of the suit — Pflueger is.

"We're hoping that the Lucas Trust will work with us to uncover precisely what happened here," Fried said at a news conference yesterday.

Harry Henderson, attorney for the Lucas Trust, said he had not seen the complaint, but is confident the trust will not be found responsible. He said the trust has ordered a survey, now under way, to determine precisely which part of the reservoir it owns, and whether it owns any part of the failed dam.

"The sympathies of the trustee and beneficiaries of the trust go out to the families of the victims," Henderson said.

The big reservoir, which now holds only about a tenth of its original capacity behind its damaged dam, was the dominant irrigation feature in the days of the Kilauea Sugar Co., feeding sugar fields directly, and serving as a source of water to three smaller reservoirs at lower elevations.

Pflueger bought the majority of the reservoir, including all or most of the dam, from C. Brewer & Co. in 1987. C. Brewer has sold off most of its assets and is in dissolution. A minority portion is owned by the Lucas Trust.

The legal action against Pflueger and the trust is just the first major court action since the flood, but property damage claims by owners of land along the floodway also are expected.

Fried and his legal team, which includes Kaua'i attorney Teresa Tico, represent 32 clients on 18 different properties who plan to file property damage suits.

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